



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32495259

Date: AUG. 05, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a music producer and director, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for this classification through evidence of either a major, internationally recognized award or that he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” A petitioner can demonstrate that they meet the initial evidence requirements for this immigrant visa classification through evidence of a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that they meet at least three of the ten listed criteria, which call for evidence about lesser awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a music producer who specializes in the Christian (Catholic) music genre. He has founded music groups, and through his business [REDACTED] has organized, produced, and promoted concerts at several venues.

We note that the Petitioner indicated in Part 6 of Form I-140, Immigrant Petition for Alien Workers, that his job title is music director, and he later described the duties of his work as music director/producer in the religious context. He also submitted evidence of his previous work as a music producer and director engaged in the organization and direction of concerts and the production of songs and albums in the religious music genre. We will not narrow the Petitioner’s field to the limited fields of religious, Christian, or Catholic music production and direction, rather than the field of music production and direction as a whole. To hold otherwise would render meaningless the requirement that a petitioner be among the small percentage of the very top of their field by allowing a petitioner to narrow their field until they rank among the top of a small group in that “field.” *See Buletini v. INS*, 860 F.Supp. 1222, 1229 (E.D. Mich. 1994) (finding that the petitioner’s field was medical science rather than nephrology).

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that they received a major, internationally recognized award, they must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets the same five evidentiary criteria he previously claimed. After reviewing all of the evidence in the record, we conclude that he does not meet the initial evidence requirements for the requested classification.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

To meet the requirements of this criterion, the evidence must show that the petitioner received a prize or award, that the prize or award was granted for excellence in their field of endeavor, and that the prize or award is recognized in the field at the national or international level.

The Petitioner submitted evidence that in 2019 and 2020, he was named as "Catholic Producer of the Year" by the [REDACTED] [REDACTED] Nicaragua. In her decision, the Director concluded that because these appeared to be regional honors, they were not nationally or internationally recognized. On appeal, the Petitioner refers to evidence in the record that shows [REDACTED] [REDACTED] in Nicaragua, and that the focus of the [REDACTED] is evangelization through arts and culture on a national level. We agree that the evidence does not show that either the scope or potential pool of candidates for the award are limited to a particular region of Nicaragua.

However, although the Petitioner asserts that the [REDACTED] has the authority to grant the award "to any individual within the nation of Nicaragua," the nature of the award limits the potential pool of candidates to those music producers who have produced music in the Catholic music subgenre in the past year. This limitation is seen in the criteria for the award, as stated in a letter from one of the members of the [REDACTED] who indicates that winners are selected based upon "audio and image quality, dissemination, integration, social perception, and evangelization content." The committee member also goes on to state that the Petitioner's music production using digital platforms "permitted that our evangelization and comforting message reached thousands of people," shedding further light on the reasons the Petitioner received the award. A second letter from the same individual states that the two candidates for this award in both 2019 and 2020 were selected because they "have devoted themselves to Catholic productions." This inherent limitation on the pool of competitors for this award excluded those music producers working in Nicaragua in music genres not focused on evangelism of a particular religious belief, thus limiting recognition of this award to those in its same genre.

In addition, the plain language of this criterion calls for evidence of an award's national or international recognition in the field of endeavor. Here, the record does not include documentary evidence of the recognition of the Catholic Producer of the Year Award in the broader field of music production beyond the issuing organization. For both of these reasons, we conclude that the Petitioner has not established that this award is nationally recognized in his field of endeavor.

Another award received by the Petitioner is the Alma Mater Prize, which he received at the [REDACTED] [REDACTED] Arts Festival in [REDACTED] 2000 from the [REDACTED] in Nicaragua. The certificate indicates that he received the prize in the category of musical performance, and that he was recognized as a solo instrumentalist. A letter from an official of the [REDACTED] elaborates that the organization awarded the Petitioner at the festival for his piano performance, and other evidence states that the [REDACTED] is composed of ten member universities and three unions.

The Director concluded that the Alma Mater Prize was not nationally recognized. On appeal, the Petitioner asserts that because the [REDACTED] is a national organization with member universities across Nicaragua, "any award issued by the [REDACTED] should be considered national in scope." We first note that

the [] is an organization “that supports and advises higher education,” and the Petitioner has not shown that the awards it issues are considered nationally or internationally significant by those in the field of music production. Second, while the Petitioner submitted a single newspaper article which reported on the results of the same festival in which he competed, the record does not include further information about the reach or circulation of the newspaper in which it was published, or additional articles in other media that might show recognition on a broader scale. Accordingly, the record does not show that this award is nationally or internationally recognized in the Petitioner’s field of endeavor.¹

Additional certificates were included in the record which acknowledge the Petitioner’s work in organizing and producing concerts and other music projects, but he does not assert on appeal that any of these constitute nationally or internationally recognized prizes or awards. We therefore conclude that the Petitioner has not established that he meets this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

To meet the requirements of this criterion, a petitioner must establish that not only have they made original contributions, but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. See *Visinscaia*, 4 F. Supp. 3d at 134-35.

Here the Petitioner submitted several reference letters in support of his contribution to the field of music production and direction, and he highlights sections from some of them on appeal.² He asserts that the letters show that through his work as a music producer and director he “has changed the landscape of religious music as Nicaraguans know it.” A letter from an official of the [] Theater in [] Nicaragua confirms that the Petitioner conducted two concerts at this venue, in 2011 and 2015, featuring a variety of well-known Nicaraguan artists. The official states that this was an “innovative artistic proposal” that showed “that there was a Christian market segment that had been ignored,” and that these concerts opened “a new path in national production.” But while the record includes certificates which verify the Petitioner’s role in these performances, the statements regarding the Petitioner’s influence on religious music or the field of music production are not supported by documentary evidence showing that the Petitioner’s work was novel or innovative and that it influenced other music producers.

Another letter was written by F-L-M-G-, an artist and musician, who states that the Petitioner’s “orchestra” (apparently referring to the musical group founded and directed by the Petitioner, []) performed at his foundation’s “cultural house.” He goes on to write that the Petitioner’s work inspired his “thirst to serve God,” and that the Petitioner “is the only producer who has had the capacity and motivation to gather many songwriters and singers at several artistic locations.” While the letter

¹ We also note that the Petitioner received this award for his piano playing, not for his skills or performance as a music producer. It was therefore not granted to him based upon excellence in his stated field of endeavor.

² We have reviewed and considered all of the reference letters in the record, including those not specifically mentioned in this decision.

confirms that the Petitioner's acted as a producer at this venue, the assertion that he is the only music producer able to produce events featuring multiple artists is not supported in the record.

The Archbishop [] also submitted a reference letter on the Petitioner's behalf, which notes that he has served the Catholic church as a music producer for his entire career. He explains that the Petitioner's work as a music producer has been important for evangelization in his archdiocese, and that the Petitioner "is the main exponent of catholic music in Nicaragua." But as we stated above, we will not narrow our consideration of the Petitioner's field of endeavor to the extent that he is one of only a very small number of those in that field. While the Petitioner's work as a producer for music groups in the Christian/Catholic music genre may be valuable to the Catholic church as a means of evangelization, the Archbishop's letter does not evidence its influence on the field of music production.

The Petitioner asserts on appeal that he has made his mark on the development of religious music in Nicaragua, and refers to a letter from the President of [] which states that his work and the awards he has received have inspired current students of the school, his alma mater. Although the letter lists the Petitioner's achievements as a musician and musical director of the band [] these contributions are limited in their in their impact and significance to the university and the band, and thus do show significance in the broader field of music production.

These letters show that the Petitioner has performed as a musician and as a producer and director at venues in Nicaragua, and that he has made contributions to organizations through his work in the Christian/Catholic music genre. But they do not establish that he has made original contributions of major significance in the field of music production, and he therefore does not meet the requirements of this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

In her decision, the Director acknowledged that the Petitioner had submitted evidence that he had produced and advertised musical performances, but concluded that this evidence was not of the type called for in the plain language of this criterion. On appeal, the Petitioner asserts that the Director erred in not considering evidence of the number of views of his videos as comparable evidence under 8 C.F.R. § 204.5(h)(4).

We first note that the Petitioner's representative does not refer to specific evidence in the record to support his assertion that "one of his latest videos has over 184,00 views." Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

In addition, although the Petitioner asserts that the Director should have considered other evidence in the record regarding the concerts and songs he has produced as evidence of his commercial success in the performing arts, he did not meet his burden of showing that the types of evidence listed in the plain language of this criterion were not applicable to his occupation. He referenced the comparable

evidence provision in responding to the Director's request for evidence, but the Petitioner did not address this requirement with respect to this criterion at that time and still does not on appeal, other than to refer to "antiquated ideas of commercial success." Nevertheless, the evidence showing that the Petitioner did produce compact disks, both his own and that of other artists, as well as live concerts, would have refuted any claims that the evidence of sales figures related to those works do not apply to his occupation. As the Petitioner did not submit evidence meeting the plain language of this criterion, he has not established that he has enjoyed commercial success in the performing arts.

B. Final Merits Determination

Per the analysis above, the Petitioner has not established that he meets the requirements of three of the five evidentiary criteria he has claimed on appeal. Although he claims eligibility for two additional criteria on appeal, relating to the display of his work at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vii) and leading or critical role at 8 C.F.R. § 204.5(3)(3)(viii), he cannot fulfill the initial evidence requirement of meeting at least three of the criteria under 8 C.F.R. § 204.5(h)(3). Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the additional criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Accordingly, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the sustained acclaim and recognition as amongst the very top of his field required for the classification sought.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.